LABOUR LAW PROTECTION OF WORKING WOMEN

by

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I. Up-to-date subject

The social progress can precisely be measured by the evolution of the social condition of women. This marxist conclusion means that the social condition of women is an up-to-date subject at any time.

In our century, the change of the social condition of women definitely has gathered speed in the developed and moderately developed countries. This is due to the industrialization, urbanization and the transformation of political systems. The substance of this process is the gradual implementation of the equality of sexes.

II. The change of women's condition in Hungary during the last 30 years

The change of women's traditional condition begins along with the industrial revolution in the time of the capitalist development when a large-scale employment of women takes place. This progressive change, however, is full of contradictions. The women's labour force plays a subordinate role (lower wages, special female industries and occupations, unskilled labour) and still there is a traditional family role for women.

In Hungary, the capitalist development took place later than in the West-European countries, but along with the development of economy, there was an increase in the number of working women. As early as 1910, 23,6% of the whole occupied population were women, in 1920, this proportion already reached 30%, that is over 1 million persons. The exploitation of working women in Hungary was much graver than in any West-European country. In Hungary for example the work-time of 14 – 16 hours was legalized – without distinction as to sex and age – when in England, the underground mine-work had been disallowed for a long time while in Hungary – even in the 1870s – 15,1% of the miners were women. According to the Act of 1876 a woman who became pregnant could immediately be fired.

The economic and social changes after world war II led to a qualitative change of the evolution of Hungarian women's condition. After

1945 along with the change of the social system the first step was the assuring of equal rights for the implementation of women's emancipation. In the wake of quick industrialization, the right to work formed a line with other rights and in the later stage of our development the right to education became a right that was safeguarded in a wide scope. In the first half of the 1950s, the efforts to solve special woman problems fell off. There was a dominating point of view that the woman question might be regarded as basically solved and that the actual implementation of women's emancipation would be a natural concomitant of the gradual development of society.

The facts, however, did not justify this supposition. The development was slow and varied by recessions. Having realized as matters stood the party initiated an inquiry for the revelation of women's actual condition. The summary report of the inquiry results was discussed by the Party Central Committee in 1970 and a decision was taken about the tasks. The resolution words the realization that a disadvantage of women can be terminated only by permanent and deliberate efforts and that along with political and economic measures, at the rate of development, there is a significant role to be played by shaping of consciousness, since the traditional notion of woman's role is to be changed by a persistent educational work requiring a long time. The party decision mobilizes the whole society for promoting completely equal rights of women.

In the wake of the decision, state and social bodies assigned a great many concrete tasks in their own field of activity and for the organs being under their control. As an example a Cabinet-decision could be mentioned which makes provisions about the economic and social condition of women.

The task of this study is to outline the rules of working women's labour legalisation protection and the implementation of these rules. I think, however, that being confined to this question I would one-sidedly show the change that has come about so far in women' condition. To escape this I will presently be dealing with some most significant elements of social equality of women, I will sketch out the results achieved and present deficiencies and after that go on with the questions of labour law protection of working women.

The model to solve the woman question in the European industrialized socialist societies is that the world must be arranged both in the macrosociety and in the family on the basis of complete human equality. What must be carried through is not only "participation" in the macrosocial and family role, but also the transformation of both "man world" and "woman world" structure on the basis of human equality, that is creation of a new structure on the basis of new values.

The implementation of this model can be expected only in the distant future. We can, however, report on some results in the process of formation of social equality.

1. *Safeguarding the political, civil equality of women*

In the sphere of justice and politics the equality of women can be regarded as assured. There is no legal rule or political document that gives less rights to women than to men or produces a disadvantage for women. On the contrary, the Constitution declares the civil equality and prohibits sex discrimination.[1] Along with the declaration of the general civil equality it is worded that "in the Hungarian People's Republic women and men enjoy equal rights".[2]

One of the most basic civil rights, the rights of voting for example is a due of every citizen of full age and everyone who has the right of voting can be elected Member of Parliament or councillor. Although the number of elected women Members of Parliament has not reached at all the desired quota the data show a definite growth.

The proportion of women at the three latest Paliamentary Sessions

Number of Members of	1967/71	1971/75	1975/80
	Session		
Parliament, sum total	349 (100%)	342 (100%)	352 (100%)
Number and proportion of women Members of Parliament	69 (19,8%)	89 (23,9%)	101 (28,7%)

46% of working people united in the trade union are women.

2. *Safeguarding gainful employment for every woman of active age*

The creation of actual equality of women can be started only in the sphere of relations of production, in the field of human work. One can not speak about real equality without a wide possibility of participation in the social division of labour.

After the liberation, women were joining in the social division of labour by leaps and bounds.

The evolution of proportion of wage-earning women in Hungary between 1930 and 1970

Year	Wage-earning women	
	by percentage of total occupied population	by percentage of all women
1930	26,1	22,0
1941	27,3	24,1
1949	29,2	24,9
1960	35,5	32,8
1963	36,8	32,8
1970	41,1	38,7

It is remarkable that by effect of employment policy, the proportion of wage-earning women in the total occupied population increased from 29,2% in 1949 to 35,5% in 1960, but today this number reaches 33%. During the last 30 years, the number of wage-earning women has increased by 90% in Hungary. (The number of wage-earning women was 1,2 million in 1949 and 3,000,080 in 1977.)

In 1977, over 75% women capable of work were either working or learning or receiving a child-care allowance.[3]

In the capital and in some big cities this number is over 80%.

The high proportion of women's employment is a significant achievement. Safeguarding work possibility does not mean, however, that everyone has equal chances for participation in social activity. An essential thing is in which field of work, in which industries, in which professions there is a possibility for women to be employed and what was the education of women like in the questioned period.

3. *The transformation of disadvantageous structure of women's employment*

The main trend of the change of the employment structure is in close connection with the change of the social-economic structure, with the fact that the agricultural nature of a country has become an industrial one. According to this a significant proportion of both working women and working men had been migrating from agriculture to non-agricultural industries, to both physical and mental occupations.

(While in 1930, 49% of occupied women worked in agriculture, today, this number is only 30%. In 1930, one fifth of the occupied women, that is 170,000 persons were indoor servants, today, we have only six thousand domestics.)

The proportion of age-earning women has increased in each of non-agricultural branches.[4] The most significant increase took place in commerce, industry, transport and in telecommunication. Within industry, the biggest part of women flowed to heavy, light and food industries.

The phenomenon that a wide scope of careers has become open for women we can definitely estimate as a change paving the way of social equality. If we examin, however, the proportion of women within branches and industries – that is whether there is a needed spreading in the choice of occupations – the experience is not so favourable. We can not be satisfied at all with the change of the employment structure. Even in 1970, the highest proportion of women was in the so called traditional woman occupations. 70% of employees in textile industry and 85% in textile-clothing industry were women. Spinning, weaving, tailoring, sewing professions have been woman occupations up to now. There is a prevalence of women in commerce, catering trade and services. (In 1970, aproximately 80% of shop-assistants and cooks were women and the proportion of waitresses, women photographers and hairdressers was about 60%. In cooperative handicraft and domestic industries, the proportion of working women was the highest: 92%.)

Along with types of work traditionally regarded as woman professions the proportion of working women significantly has increased mainly in the branches where the labour processes require manual skill and patience rather than physical effort or particular combinative ability.

(As far as engineering industry is concerned, the proportion of working women in telecommunication and vacuum engineering industry is 55%, in iron and metal mass production – 44% and in precision engineering – 42%.) One can argue how it depends on "natural" flair and in what measure it can be explained by the fact that industry can use unskilled woman labour force in these fields of work.

In the sphere of mental occupations most remarkable is the great proportion of women among pedagogues and office-clerks, the lowest proportion is in the technical fields.

(In 1970, 20% of the active earners occupied in technical field were women, in public health and in the field of culture, the proportion of women was 63% and among office-clerks this proportion was 69%. At the same time 73% of pedagogues teaching in primary schools and 45% of pedagogues teaching in secondary schools were women.) Effemination of the pedagogical career is a favourable phenomenon in educational process as far as women's advance is concerned, it is a disadvantage, however, that there is a want of men playing the "father role", especially among adolescents. In effemination of mental careers a role is being played by the unfavourable estimation of social standing of this career, by disproportionate division of qualifications between sexes and by a low-wage-level that is in tight connection with the previous facts.

4. *Equal division of educational level and qualifications between sexes*

In our country, the right of education is a constitutional right of every citizen.[5] Among a great many legal rules that are destined to aid the realization of the right secured in the constitution that one is worthy of attention which safeguards a favour with pay concerning working hours, paid study leave and defrayal of travelling expenses for employees who continue their studies while working.[6]

During the time that has passed since the liberation, our state has taken significant efforts to generally step up the standard of school education and to even the schooling disadvantage of women.

The effect of development of schooling possibilities in the first place can be measured by growth of educational standard of youth. As a result of grave default of the earlier educational policy, even in 1949 the number of those who had finished less than 8 classes was extremely high. In 1973, however, this proportion changed to a significant degree. (In 1949 among people of 15 – 29 years of age, this proportion was 70% concerning men as well as women. But in 1973, the proportion of women who had not finished primary school was less than 8%.)

As the general educational standard was running up the schooling standard of women was drawing near to men's. In spite of this favourable

development the schooling standard of women is still lower then men's. This development, however, is shown by data more expressively if we examin schooling standard by age groups.[7]

According to the census returns of 1970, in age classes over 30 years the schooling standard of men was higher than women's in every age group and every category. *The primary and secondary education of women,* however, is already *higher than men's.* In the sphere of university education the schooling standard of the two sexes is rapidly drawing near to each other.

The significant result achieved in women's education to some degree is depreciated by the data which concern acquiring qualification that one can really use in division of labour. The main deficiency of the qualification structure is that women's schooling is advancing mainly in *general education,* and yet there is a very great difference *in professional education.* Girls' education one-sidedly follows "consolidated traditions".[8]

In vocational secondary schools – where the proportion of girls is 50% on an average – economy and health branches are those dominated by girls. (According to a wrong provision boys can not be admitted to a vocational secondary school of health.)

In vocational schools for skilled employees – where the proportion of girls is 26% on an average – 95% of pupils of textile industry, 72,6% of pupils of leather and peltry industry, 92,4% of pupils of clothing industry, but only 16,1% of pupils of precision engineering are girls.

The main deficiency of our vocational training of medium level is the fact that a great part of girls does not acquire professional qualifications, but those who take part in vocational training prepare themselves for following traditional woman professions. This educational structure leads to a circumstance that a great part of women can only take up a job that require no qualifications. (In 1974, for example, 23,5% of all women working in state industry were skilled empoyees, 59,6% of them were semi-skilled and 16,9% – unskilled employees. On the other hand among men, there was a prevalence of skilled employees.

In the past a resistance to women's schooling was the strongest in university education. After the liberation the participation of women in university education gradually had been increasing. While in the early 1950s hardly 1/4 of university students was women, *presently almost half of day-schools of university institutions are women.*[9] This significant achievement, however, has its own flaw. The women students are not divided proportionally amid various specialities, but a much greater part of candidates for continued study makes a bid only for a few professional fields. Therefore it comes to pass that at an entrance examination girls with a comparatively better credit are not admitted to overburdened faculties, whereas boys even with a lower credit at taking an entrance examination manage to obtain admission to these institutions that girls are keeping away from. There is the highest proportion of women in teachers' training schools, in nurses and kindergarten teachers' training colleges, at pharmaceutical and philosophical faculties. There is the low-

est proportion in veterinary schools and polytechnical colleges and universities.[10]

However strong the sweep of women in institutions of higher education has been, the liquidation of the backwardness of the past has not yet been quite a success. Only one third of those who have acquired a higher grade of education is women.[11]

The present structure of the professional education is the main encumbrance of enforcing the principle "equal work equal pay". It follows from occupational, educational and office-bearing composition that the level of women's earnings falls behind that of men's. The difference of the professional education, however, does not explain the cause of the deviation of payments for men and women with the same professional schooling.

The skilled working women employed in socialist industry in September, 1974 had a wage of almost 30% less then working men and the semi-skilled working women had a wage 28% less then those ones. The unskilled working women got a wage on an average 24% less then men.

Not a little role is played in this deviation by the decisions concerning wage policy that define the wage standards in relation to industrial branches and industrial groups brought into comparison. The aim of these decisions is that wages for physical work – beyond professional education requirements – should be defined by a grade of hardness of work (encumbrance of the physical or nervous system and harmfulness to health). Therefore the biggest wages are in mining and metallurgy. In light industry and especially in industrial groups mainly employing women they are the lowest ones. It was proved by an experiment that the majority of women has more convenient working conditions and make less efforts while working than men.

According to this, as an equal grade of working conditions is concerned, the difference between men's and women's wages is to a great degree less.

Women employed in a skilled, non-physical job get a basic rate approximately 30% less than men. (The women employees with a university education get 75%, and with a professional secondary education get 71% of the basic rate of the men with the same educational level.)

The situation is a bit more favourable in managerial positions. (In the managerial positions of state industry for example the women's basic rate was – according to the office held – 7–16% lower than the basic rate standard of the jobs concerned, in production managing this figure was 22% in 1974. The deviation in cooperative industry was 10%, in production managing – 14%.)

Apart from the above-mentioned factors in the difference of women's and men's wages a role is played by a relatively shorter employment of women which is a result of the termination of the employment due to the raising of children, housekeeping, illness of children.

That fact for example that women get less wages than men even in the woman professions can be explained by striving for keeping in a

small number of men working there. At last, in determining wages, one can not neglect a prevalent subjective personal factor, a wrong attitude.

In 1973 the government discussed the state of women's waging and a special decision was taken concerning the enforcement of the principle of equal payment for men and women holding the same job. The decision assigned as the main task the gradual termination of the causes that had brought about deviation of wages between sexes. This primarily means a heightening of the professional education of women and a formation of an attitude both with young girls and women as well as employers.

5. *Approximately equal division of managerial jobs between sexes*

The effects of structural deficiencies of employement and education are felt in women's vertical mobility: partly they are an objective encumbrance for women in becoming a manager. A chance of a promotion is less for women than for men. (This is proved by the fact that in 1970, only 5% of managers of enterprises and cooperatives and 14% of executives of administrative bodies and local authorities were women.)

In 1973 in state industry there were 3 women of every 100 directors – general and directors, and 9 women of every 100 assistant managers. The greatest proportion of managerial jobs was gained by women as chiefs of sections, but only 18% in this field, too. The proportion of women employed in managerial jobs in agriculture is even less favourable thanthat.

The differences leading to a disadvantage of women in managerial jobs are only partly motivated by objective factors. The fact that in case of the same level of education, there is a great difference in division of managerial jobs between men and women shows that in this matter, a role is played by prejudices existing in society. (According to an experiment of 1971, 39% of men and 10% of women with university or secondary education fulfilled a managerial function either on top or medium level.[12]

The proportion of women in managerial positions does not draw near to a desirable measure even in those lines of occupation where there is a prevalent proportion of women employed. (In 1970 for example, 85% of pedagogues of primary schools were women but among head-teachers only 17% and among deputy heads 40% were women. In the school-year of 1975–76, this proportion to some extent was better: 23% of head teachers and 53% of deputy heads were women. In secondary schools the situation was a bit better: with 50 % of women's proportion is 1970, among headmasters and deputy headmasters, 22% were women, in 1975–76 this figure rose to 25,9%. In textile industry, where the proportion of women was 70%, only 16% of managers were women in 1970.)

Apart from the above-mentioned causes of unjustified differences, there are a lot of other ones. Disadvantages of family roles played by women to a great extent affect mangerial jobs, for a drop-out of job because of childbirth and child-care leads to a more difficult situation for an employer than for subordinates. Some women with appropriate education do not

willingly take up a managerial position for fear of a bigger burden. At last, in a lot of fields there is an attitude according to which women are not at all suitable for the fulfilment of managerial jobs. Our society that has set itself an aim of the complete equality can not regard the present situation acceptable. The party decision of 1970 that had been mentioned in the preamble calls upon the bodies and leaders of party, state and social organs to set a good example and promote women to participate – in a greater number and more courageously than up to now – in the work of the leading bodies, in elaborating tasks and in making decisions on the merits.

6. *Women's equal participation in occupations of great social efficiency where the essential decisions are made on behalf of the guidance of society and in public life*

The result of processing of census data does not sufficiently differentiate among different levels and ranges of guidence. Therefore we have no comprehensive notion about the proportion of women among leaders on top level and in leading bodies. The general conclusion about participation in management – according to which this participation is not satisfactory – applies to participation in leadership on top level, too. Along with this, however, one can also see, that by the inspiration of the party and government decision referred to – if even at a slow pace – the number of women both in management generally and in top leadership shows an increase. Growth is quicker in social organizations and slower in state organs and enterprises.

Into the Central Committee of the Hungarian Socialist Workers' Party for example the number of women elected by the participants of the congresses was as follows:

VIIth congress	7 women	
VIIIth congress	8 women	
IXth congress	5 women	
Xth congress	9 women	1970
XIth congress	16 women	1975

The number of the Central Committee members in 1975: 125 persons. The proportion of women among party members: 26,5%.

Among the first secretaries of the Budapest, county, district an town party committees there were only 6 women in 1970.

In a wide scope, women participate in the trade union activity. Over 46% of the trade union membership are women. 51% of the trade union stewards and 45% of the shop stewards are women. In the trade union offices on a higher level, the proportion of women is changing between 30 – 37%.

The number of women elected as members of Parliament indicates a gradual growth, as it was mentioned in point 1 and presently, the proportion of women is 30%.

On summits of administrative organs one can find too few women. Of 17 ministers, only one is woman, the minister of light industry, and of 86 deputy ministers 4 are women.

Among councillors the proportion of women is 25,2%, among members of tenants' committees this proportion is approximately 50%.

In 1976, the Hungarian Academy of Sciences examined the women's conditions in the system of scientific qualification and it was found that the proportion of women with a scientific degree is low and the rate of growth of this proportion is very slow.

The number of those with a scientific degree and the proportion of women in 1976:

Candidates 4560 persons, among them women 528, 11,4%, doctors 764 persons, among them women 41 persons 5,4%.

The growth of the women's proportion among those with a scientific degree between 1965 and 1975 in the first and in the last three years:

In the years of 1965–67 a candidate's degree was acquired by 804 persons, among them women 81 persons, 10,0%

In the years of 1973–75 a candidate's degree was acquired by 975 persons, among them women 139 persons, 14,2%

In the years of 1965–67 a doctor's degree was acquired by 130 persons, among them women 3 persons, 2,3%

In the years of 1973–75 a doctor's degree was acquired by 237 persons, among them women 9 persons, 3,8%.

These data can really not be regarded as satisfactory, especially if we take into consideration that 25% of the researchers working in academic research institutes are women and that 40% of university diplomas are acquired by women.

Having finished the description of changes that have taken place in the women's social condition we can find out that there has been a significant advance in some elements of this extremely complex problem, that is in the field of political and civil rights, employment and qualification. Development can be felt in other fields, too, but its rate is not as yet satisfactory. Since the party and government decision of 1970 the public opinion, communities of working places and state organizations have been more strongly interested in the questions of women's equality and this fact as well as the day-to-day efforts justify a hope that the tendencies outlined by data will become stronger in future.

III. Labour law protection of working women and its realization

In realization of women's social equality a significant role is played by law. Headed by the constitution the rules of different branches of law add to obtaining this important social aim. Apart from those mentioned above especially significant are the legal rules of family law, labour legislation and social security acts which in accordance with one another

are destined to secure the equality of women in the family, employment and other spheres of the social division.

In the questioned field, the rules of our labour legislation is characterized by the fact that along with general provisions, there are special provisions concerning women to balance and equalize in this way disadventages due to the biological function of women. The formally equal regulation may be very attractive, but it does not take into consideration the real nature of things and thus would lead to great inequality.

The Labour Code (Act II of 1967, abbreviation: L.T.) contains divergent provisions as to establishing employment for women, the individual rights and duties being in force during employment and concerning the termination of the employment relations.

1. *The establishment of the employment relations*

a) The law safeguards equal possibilities for men and women for the fulfilment of every field of work. According to the principles of the Constitution the Labour Code provides that "In the course of the establishment of the employment relations it is not permitted to make disadvantageous distinctions between employees according to their sex, age, nationality, race and social origin" [L. 1. § 18 (3).]

As to this general provision, however, the group of pregnant women and those with little children require stronger protection. Experience shows that a part of employers does not willingly employ pregnant women and mothers with little children just because of the fact that labour legislation rules safeguard special benefits for pregnant women and mothers with little children. Therefore the law provides that "The employment of a pregnant woman or a mother may not be refused because of these facts. In employment in case of equal conditions preference must be given to a pregnant woman or a mother with a little child. [L. 1. § 19 (2).]

In this country it is already not questionable to-day that enterpises along with their economic functions have also social and among them welfare tasks. The quoted rule of the Labour Code according to which preference must be given to the group of working women that require a special protection – as against the economic function of an enterprise – thrusts forward the realization of a social aim, the creation of the equality and social security of women.

One must see, however, that this rule prohibits unjustified discrimination only between the employees who are in the same conditions. Justified discrimination does not violate a provision of law. This means that the disregard of a working woman who has not the same conditions as against a man does not mean a disadvantageous discrimination. In judicial practice, however, did not exist a uniform attitude in the question what is to be understood by "identical conditions". According to the standpoint of the Labour Division of the Supreme Court "every substantial and lawful condition that can be taken into consideration during the employment belongs to this sphere". The Labour Division emphasizes that the employer can insist on the employment of men only in those

fields of work where the very nature of work excludes the employment of women. Therefore the enterprise generally can not seclude itself from the employment preference of a pregnant woman or a mother with a little child applying for a job on a motivation that it wants a man for that job. (Standpoint of number 97.)

The Labour Division of the Supreme Court maintained a standpoint in a question requiring an interpretation, too, namely who is to be regarded as a "mother with a little child" from the point of view of the enforcement of the law. The Labour Division set out from the fact that the problems having connections with care and attendance usually emerge before a child has reached the age of six. This also depends on the fact that a child becomes suitable for the participation in primary school education from the age of six. Taking all this into consideration the Division maintained a standpoint that a mother who is to be regarded as a mother with a little child is bringing up and taking care of a child under six years of age who not having reached a schooling maturity can not take part in school education. (Standpoint of number 97.)

At the establishment of the employment relations, preference – in case of identical conditions – must be given to the dependents of a person who does military service as a private with whom they shared a household before his joining up. [Government provision of number 19/1964 (VIII. 9.) § 7 (1).]

The duty of giving preference however is often violated by employers. The Labour Court aids a woman who applies to it for the enforcement of her rights. In its judgement the Court establishes an infringement of lawful rights by the enterprise and compels it to employ. Apart from this the provision of infringement of lawful rules [Government provision of number 17/1968. (IV. 14.] provides that the employer who has violated the rule of the obligatory preference for the violation of a rule may be fined up to three thousand forints. It is difficult, however, to find out the cases when a woman applying for a job acquiesces in a refusal and does not appeal either to the trade union or to the organs that can resolve a dispute.

b) The general rule that women enjoy equal rights to be employed in any job had to be completed – just in the interest of women – by the legislator with exceptional provisions in view of the fact that work performed in some jobs may put in danger the health of women or their future children. Therefore the law prohibits these dangerous jobs to be performed by women. Thus, according to law women must not be employed in work which would adversely affect their constitutions. [L. C. § 20 (2).].

These jobs are enumerated in the provision. On this basis women must not be employed in work which is accompanied by high physical and nervous stress, shaking and in work putting in danger their own health as well as the health of others and so on, (further, in work where they are subjected to intensive heat effects, in work which is accompanied by the increased cooling down of the body or in work where their bodies

get permanently soaked, in work under increased air-pressure, in work being carried out with poisonous materials causing increased harm to the blood-forming organs, to the nervous as well as to the hormone system).

Besides the above-mentioned there are also jobs which are not harmful to all the women but only to those who have a weaker bodily constitution. To these jobs women who apply to be employed can be accepted only if a previous medical examination finds them fit to perform the jobs in question.

A labour contract signed in violation of the provisions described above loses its validity. This results, first, in the obligation to try to remedy the invalidity (that is to put the working women in an other job) and in case this effort fails, the employment relations have to be terminated. And in case the invalidity is due to the fault of the enterprise at the termination of the employment relations the enterprise is obliged to pay the employee her average pay for the time the employee would be liberated from work if she were given notice by the enterprise (15 – 30 days). However, the employment relations established on the basis of an invalid contract should be considered as far as the rights and obligations originating from it are concerned as if it had been in force on the basis of a valid contract.

2. *Rights and obligations during the employment relations*

Special provisions relating to all the women during the duration of the employment relations are very few. In this connection provisions securing the protection of pregnant women as well as of women with little children come to the fore with the aim to determine the limitations in time of the work to provide them with a sufficient amount of free time as well as to prevent any harmful effect on their health.

a) The break-down of the working time and overtime

As to the break-down of working time as well as to the time limits of ordering overtime the law contains provisions of a somewhat general character. According to them "Working time must be broken down and overtime may be ordered to an extent that this should not put in danger the health and the corporal integrity of the employee or this should not represent a burden not proportional in view of her personal and family circumstances." "For the worker between the termination of her daily work and the beginning of her work on the next day at least an uninterrupted eight-hour rest time should be ensured." [L. C. § 38 (1 and 2).]

The provisions quoted may be criticized from many points of view. On the one hand it becomes evident from them that till now we have not yet succeeded in putting an end to the night-work of women. The government decision on the improvement of the situation of women, too, stipulates only that it is necessary, in textile factories working in three shifts, to investigate the possibility to put an end gradually to the night-

shift and that primarily the employment in the nightshift of mothers bringing up their children alone as well as of mothers with more children should be decreased. (In 1974 the rate of women working in three shifts was 18 per cent and 21 per cent of all physical workers employed in socialist industry work in three or four shifts.)

The other critical remark refers to the extent of the daily rest time which is to be obligatory and ensured by the employer. Though the law leaves to the collective contracts to limit the extent of the overtime and collective contracts serve numerous good examples, the protection of the law, can however, not be regarded as satisfactory. In principle it gives a possibility to employ the employees – among them women, too – during too long a time within a working day. It would be desirable that in the future the law determine the duration of the obligatory daily rest time as a longer time. (A survey shows that during a quater of a year an average male employee doing overtime performs 34 hours of overtime whereas in case of female employees the corresponding figure is 26 hours.)

However, pregnant women and mothers with little children are protected by the law against being assigned to night work and being ordered to perform overtime.

a.a) A woring woman must not be obliged to work at night from the fourth month of her pregnancy until her child reaches the age of one year. [L.C. § 38 (3).] This provision does not mean the complete prohibition of the night work in the case of pregnant women and mothers with little children, it means only that in order to assign them to night work it is necessary to have their consent. Without this their assignment breaks the law. A further provision regarding shift-assigments is that "From the fourth month of pregnancy until their child gets one year old women should be assigned, if possible, to the morning shift". [The enforcement provision is the decision of the government No 34/1967. (X. 8.) – further L.C.E. § 44 (3).]

In my opinion this regulation does not give sufficient protection to mothers with little children. Partly because similarly to the above-mentioned, mothers are benefited until their child gets one year old, whereas this would be necessitated for a longer period by the fact that children have to be taken care of even later. Partly, the efficiency of the protection is decreased by the fact that the provision has no binding force.

a.b) The provisions limiting the overtime and readiness-time in fact adjust themselves to the age of the child and according to it contain stronger or weaker protection, prohibition or limitation.

The strongest protection is provided by the law to the mother from the fourth month of the pregnancy until the child gets six months old. During this time the working women must not at all be assigned to do overtime or to be in readiness. [L.C. § 38 (3).] Thus, in this case there is a prohibition of overtime and overtime can not be made legal even by the consent of the mother.

During the time from the age of six months of the child until he gets one year old, the working woman can be assigned to overtime or readi-

ness only if she consents to it. [L.C. § 38 (3) – and finally mothers who have children older than one year but younger than six years may be assigned to overwork already by a unilateral action that is if they do not consent to it, but only in exceptional cases. (L. C. E. § 46 (2).]

The working woman has the right to refuse to be assigned to do overtime or readiness if the assignment took place in violation of the provision of the law and by this she does not commit any breach of discipline. Namely, the law makes it possible to refuse to obey the instructions of the employer in cases when these instructions go against the provisions of the law protecting the interests of the employees [L.C. § 34 (3).].

However, the above described provisions do not give a full picture of the protection of women as to the time-limits of the work. Namely, the full picture includes also the knowledge of the collective contracts. The collective contracts – satisfying the stipulations of the law – narrow the possibility of overtime. The majority of them puts the maximum of the overtime which can be performed by one person at a monthly 24 hours and the overtime of women is limited separetely. Numerous collective contracts prohibit overtime in case of mothers bringing up their children alone or having two or more children or make overtime condional on the women's consent.[13]

b) Holiday, free time

b.a) Employees being in labour relations are entitled to a paid yearly holiday which consists of two parts: of a basic holiday and of a supplementary holiday. "The worker is entitled to twelve days of basic holiday after every calandar year spent in labour relations and to supplementary holiday according to his or her time spent in work relations." [L.C. § 42 (1).] After each two years spent in labour relations the employee is entitled to one day of supplementary holiday, maximum to 12 days. However, the employee is entitled to supplementary holiday not only on the basis of the time spent in labour relations, but he may be entitled to supplementary holiday also under different titles. Such titles are, for instance, the category of jobs and work harmful to health etc.

To one category entitled to supplementary holiday belong working women having several children. "Working mothers are entitled to two working days of supplementary holiday each year after three children and to two further working days of supplementary holiday after each further child up to the maximum of twelve working days of supplementary holiday each year" [L.C.E. § 50 (2).] From the point of view of being entitled to supplementary holiday children under eighteen years of age being taken care of by the working woman and not being in labour relations are to be considered. For being entitled to supplementary holiday it is not necessary that a blood relationship be at hand, working women are entitled to supplementary holiday also after their adopted children, stepchildren or children they bring up themselves.

b.b) The above-described supplementary holiday that was completed by a law provision in 1973 by adding a new kind of free time to it is cal-

led by the law provision as paid day off and the number of which increases with the number of children. Working women are entitled to two paid free days after one child under fourteen, to five free days after three or more children under fourteen [provision No 12/1973 (XII. 23.) ML]. These free days have to be given out in one piece or in parts according to the wish of the employee. Fathers bringing up their children alone are also entitled to paid free days.

b.c) Besides the various forms of holidays ensuring the provision and upbringing of the children for the female employees the maternity leave connected with the fact of child-birth and the working time-benefit for the purpose of child-feeding are of great significance.

The pregnant and child-bearing mothers are entitled to twenty weeks of maternity leave. In case of irregular birth this time can be prolonged by the enterprise with four weeks at the doctor's recommendation. Four weeks of the maternity leave should be given out before the child-birth. However, this stipulation can be disregarded at the request of the working woman if – in the doctor's opinion – it doesn't harm the health of the mother. [L.C. § 43. (2) and L.C.E. § 57. (1).] However, the holiday after the childbirth must not be shorter than six weeks even if the child was still-born or has died, or if the new-born child is given to the state to be taken care of or has been adoptive. In this latter case both the mother by blood and the adoptant mother are entitled to the maternity leave. The duration of the child-birth holiday of the adoptant mother is sixteen weeks beginning from the birth of the child.

b.d) If a working woman takes up work after the expiration of the child-birth holiday she is entitled to a working time benefit for breast-feeding the child. The duration of this time benefit is twice three quarters of an hour every day during six months from the child-birth and once a day three quarters of an hour until the end of the ninth month. In the case of twins a working woman is entitled to a working time benefit according to the number of twins. A working time benefit may be given upon request of the working woman at the beginning or at the end of the working time at one interval, the duration of it is taken into account as working time. (L.C. § 58.). A mother is entitled to a breast-feeding working time benefit if the child is fed artificially. An adoptive mother is entitled to this benefit as well.

b.e) After the end of the maternity leave however, a mother is not obliged to return to work. She has a right to decide about bringing-up her child by herself until the child has reached the age of three years. For this the provisions of the labour legislation give an aid of two kinds. On one hand the enforcement order of the Labour Code obliges the enterprise to ensure an unpaid holiday upon the mother's request for care of the child until it has reached the age of three years. On the other hand the provision gives material means to a mother – in a form of child-care allowance – to make use of her privilege.

The right of the woman employed to have an unpaid holiday goes beyond the age of three years in those cases when the child gets ill. When

the child is between 3 and 10 years old, upon the request of the woman employed the enterprise is obliged to ensure an unpaid holiday during the illness of the child so that the child could be looked after at home. [L.C.E. § 57 (2).]

b.f) Besides the child-care the creators of this law provision have thought it necessary to ensure free time also for performing household duties. Therefore the instruction upon the enforcement of the law stipulates that the working woman taking care of at least two children under the age of fourteen should be ensured upon her request one unpaid day off monthly for the performance of household duties. The father bringing up his children alone is also entitled to this benefit.

The above-described kinds of free time represent significant achievements in our labour law. Women in employment relations as the beneficiaries of the law provision as well as people dealing with labour law are equal in paying tribute to these rights which represent no small burden for the state. However, objectivity demands to mention also the shortcomings of the provisions. In my opinion, provisions regarding free time do not promote the equal distribution of roles within the family. On the contrary – they conserve the traditional division of labour formed within the family. Namely, the law permits the man to be entitled to free time only if he brings up his child alone, that is if he is compelled to play the role of the mother in the family. I should regard it as more correct if the law provision left it to the married partners to decide when and who of them will make use of the free time given for child-care, for the performance of household purposes and carry out the corresponding duties. Naturally, this doesn't regard those kinds of free time which are connected with the birth and the breast-feeding of the child.

c) Professional prohibition, limitation; obligatory transfer

c.a) To keep working women away from jobs dangerous for them is necassary not only at the establishment of the employment relations but also during the duration of the employment relations. Consequently, women must not be employed in jobs determined by the law provision and described above during the duration of employment relations. It is forbidden to transfer them to such jobs too.

c.b) The law provision contains a separate stipulation protecting the health of pregnant women as well as their foetus. Accordingly, a pregnant woman must not be employed on work harmful to her health from the moment of the establishment of the fact of her pregnancy. [1.C.E. § 12. (3).] These jobs are defined by the Minister of Health. If a woman works in a job harmful to her health she must be transferred to another suitable job. The employer is obliged to perform the transfer even without a request from the woman or without a medical certificate proving the harmfulness of the job.

c.c) However, there are cases when a job or some working conditions are not harmful to pregnant women in general but may be harmful, exceptionally, to particular persons. The doctor can convince himself of

it upon the basis of a medical examination. In the view of these cases the law provision stipulates that upon the doctor's opinion the working woman must be transferred by the enterprise to an other job, suitable from medical point of view, from the fourth month of the pregnancy until the sixth month of breast-feeding if it is requested by the working woman. [L.C.E. § 23. (4).]

However, for the validity of the transfer the Labour Code requires also the consent of the working woman. Namely, the employment contract may be modified by the enterprise and the worker only on the basis of their mutual agreement. [L.C. § 24. (1).] Consequently, if the performance of the work in the job offered to her by the enterprise causes prejudice to the interests of the working woman she has the right to refuse to give her consent to a transfer. In these cases the enterprise must secure new, suitable working conditions either by offering a new job or modifying working conditions. (Position No 57 of the Labour Division of the Supreme Court.)

c.d) From the point of view of the protection of the rights of pregnant working women an important guarantee-provision stipulates that the wages of the women transferred upon the basis of the above-mentioned provisions must not be lower than their previous average wages. [L.C.E. § 23. (4).]

Consequently, the enterprise must pay the working women their previous average wages even if they were entitled — in their new jobs — only to smaller wages or if they work shorter hours or if because of the stopping of the work they don't work.

c.e) According to the general rules regarding the performance of the work the employee must perform work on a provisional basis even outside his or her constant place of work. This rule extends also over women. Accordingly, working women may also be obliged to perform work in an other place of work or provisionally in a different locality or at a different enterprise.

However, work to be performed in a different place may represent too great a burden for the pregnant woman or for the mother having little children and, therefore, according to the law provision, from the fourth month of her pregnancy until her child gets one year old a working woman should not be obliged without her consent to perform work in a different locality. [L.C. § 40. (2).]

3. *The termination of the employment relations*

For the purpose of the increased protection of the right of women to work serve those provisions of the law which regard the termination of the employment relations. Even among them special attention should be paid to the declaration of the obligation of explanation giving protection against unjustified notices, prohibitions and limitations regarding dismissals as well as the establishment of very narrow limits regarding dismissal upon instantaneous notice.

According to the Labour Code the employment relations between the enterprise and the employee may be terminated; by mutual consent, by the transfer of the employee to another enterprise (which may be of validity only with the agreement of the two enterprises and of the employee), by a unilateral notice either of the enterprise or of the employee and, finally, by their termination with immediate effect the cases of which are accurately defined by the law.

a) Notice

An employment relation established for an indefinite period can be terminated either by the enterprise or by the employee. However, whereas the employee is not obliged to state the reasons of his or her notice and he or she has the right to transmit it to the employer verbally, the enterprise must put down its notice in written form and give the reasons for it. The explanation makes it possible for the employee to start a labour dispute and ask for the notice to be made invalid in case he or she doesn't find the reasons for the notice are real or sufficiently justified. If the organ deciding upon the labour dispute considers that the notice by the enterprise was not lawful, it may oblige the enterprise to reestablish the employment relations and repay lost wages.

Notice on the part of the enterprise is considered unlawful if it goes against a prohibition or limitation of notice. In case of the existence of circumstances defined legally the law doesn't make it possible to terminate the employment relations of the employee by notice. These conditions are connected with military service, illness, studies, performance of work abroad and the fulfilment of the mother's vocation. The prohibition of notice excludes the possibility of giving notice during the duration of the existence of the circumstances deserving special protection and for 15 days after their termination.

The employment relations of a working woman must not be terminated:

1. During the military service of the woman's husband,
2. During pregnancy and breast-feeding until the end of the sixth month after birth,
3. During the period the woman is on sick-pay because her child is ill or during the unpaid holiday given to the woman for the same reason,
4. During the period the woman receives child-care allowance or during any other unpaid holiday,
5. During the period the woman breast-feeds her child or another child put in a state infants' home while she is permitted to be in the home and for 15 days after the termination of this period. [L.C. § 26 (4); L.C.E. § 26.]

The limitation to giving notice – as against the prohibition to giving notice – means that the employment relations of the employee may be terminated only under special circumstances and in exceptionally justified cases.

Notices limited to special reasons are protecting employees of both sexes. Nevertheless, I think that they are of a greater significance for women. Namely, according to law provisions the employment relations may be terminated by notice only in especially justified cases.

1. if the employee has four or more family members whom he or she supports and there is no other earning member in the family,
2. if the employee lacks five years of employment at the most to have the right to get old-age pension,
3. if the woman is alone until her child gets eighteen years old. The father bringing up his child alone is also entitled to this kind of protection. [L.C.E. § 27. (1).]
   Further the law provision stipulates that if there are jobs at the enterprise which can be performed by the employees of the above categories, the employment relations must not be terminated by notice until there is a possibility to transfer the employees to such jobs.

b) Dismissals

The most typical case of the termination of the employment relations is when the employee who has committed a grave breach of discipline is being punished by the employer with the gravest disciplinary measure – by dismissal.

Naturally, there is a possibility to punish working women too, with dismissal because it would be incorrect from educational points of view to protect such an employee who has been found guilty in not performing his or her duties arising from the employment relations. Nevertheless, the humanitarian nature of the law is expressed in the provision according to which the disciplinary decision prescribing dismissal must not be enacted during the maternity leave [L.C.E. § 94 (2).]

FOOT-NOTES

[1] "§ 61 (1) The citizens of the Hungarian People's Republic are equal before the law and enjoy equal rights. (2) Any kind of disadvantageous discrimination of the citizens as to their sex, religions or nationality is severely punished by law."

About the modification of the Act I of 1972 and Act XX of 1949 and uniform text of the Constitution of the Hungarian People's Republic (Further: the Constitution).

[2] § 72 (1) and § 73 (1) of the Constitution

[3] Population data in 1977

Number of the population of Hungary:

Sum total:	10 million 625 thousand persons
Among them men:	5 million 154 thousand persons
women:	5 million 471 thousand persons
Number of active wage-earners,	
Sum total:	6 million 367 thousand persons
Among them men:	3 million 287 thousand persons
women:	3 million 080 thousand persons

The source of the statistic data published in the study: Tanulmányok a nők helyzetéről (Studies about women's condition). Editor: dr. Egon *Szabady*. Kossuth Publishing House, Budapest, 1972. Nők – gazdaság – társadalom. Tanulmányok a nők helyzetéről (Women – economy – society. Studies about women's condition.) Editor: Dr. Egon *Szabady*, Kossuth Publishing House, Budapest, 1976.

[4] The proportion of women in the population occupied in the socialist sector of national economy was as follows:

Industry	45,2%
Construction	17,6%
Transport-telecommunication	24,0%
Commerce	63,9
of which	
home trade	63,9
agriculture, forestry and	
economy of water-supplies	36,6
other branches	60,7

[5] "The Hungarian People's Republic ensures for the citizens the right to education". "The Hungarian People's Republic executes this right by the extension and generalization of public education, by free and obligatory primary school, by secondary and university education, by extention training of adult persons employed and by material aids for those taking part in education. § 59 (1) – (2) of the Constitution.

[6] The provision No 23/1974. (IX. 3.) of the Ministry of Labour about the benefit for the working people continuing their studies.

[7] The highest education of the population by age-groups and sex in 1970 expressed by percentage to those of adequate age

Agegroup	Have finished at least 8 classes of primary school		Have gained at least the seaondary school-leaving certificate		Have got a University diploma	
	men	women	men	women	men	women
15 – 19	89,0	92,3	6,9	10,0	–	–
20 – 24	90,6	92,8	25,6	36,5	3,1	2,9
25 – 29	81,7	83,6	24,0	27,9	8,1	6,7
30 – 34	70,7	68,1	22,2	21,6	7,2	3,9
35 – 39	60,9	53,5	22,4	13,6	9,4	3,5
40 – 49	48,3	33,8	18,7	8,6	7,0	2,1
50 – 59	31,0	21,6	13,1	5,2	5,6	1,5
60 –	17,4	16,0	8,7	3,2	4,0	0,8

[8] The proportion of girl pupils in the day-school of the first course of the secondary educational institutions:

Year	Grammar-school	Vocational secondary school	School for training of skilled workers	Secondary level education sum total
1960	60,2	45,0	19,1	34,7
1965	68,9	45,8	24,4	41,2
1970	66,6	50,5	26,6	40,9

[9]The proportion of women among the students of the dayschool of university education

Year	The proportion of women among all the students, in %
1950	24
1955	26
1960	38
1965	42
1970	45

[10] The proportion of women in the day-school of universities and other higher educational institutions

Politechnical universities	20,6%
Technical high schools	22,2%
Universities of agricultural sciences	26,2%
Agricultural high schools	13,6%
Economic university	61,4%
Economic high school	69,1%
Faculties of political sciences and law	57,0%
Philosophical faculties	75,2%
Faculties of natural sciences	56,6%
Teachers' and nurses and kindergarden teachers' training colleges	87,0%
Medical and dental faculties	52,5%
Pharmaceutical faculties	80,0%
Veterinary university	16,0%
Other high schools	47,7%
Sum total:	45,8%

[11] The proportion of women among those having university education in %

The character of University education	1949	1960	1973
Technical	1,2	7,1	13,1
Agricultural	4,2	9,8	16,0
Economic	13,9	20,2	38,0
Medical	17,2	33,7	40,4
Pedagogical	49,1	58,1	61,1
Political seciences and law	0,6	10,4	12,1

[12] The division number of professional employees according to managing grades in 1971 (in %)

[13] For example the collective contract of 1971 – 1975 of the Ganz-MÁVAG Engine, Waggon and Machine Works. The Enterprise Ferroglobus set ceiling for the overtime of the women with children at monthly 18 hours in 1974.

Sexes and educational degree	Leaders on top level	Leaders on medium level	Subordinates	Sum total
With university education				
men	11,9	24,9	63,2	100,0
women	1,6	10,6	87,8	100,0
With secondary education				
men	5,9	34,9	59,2	100,0
women	1,7	7,5	90,8	100,0

ЗАЩИТА ТРУДЯЩИХСЯ ЖЕНЩИН ПО ТРУДОВОМУ ПРАВУ

Д-р ИДА ХАГЕЛМАЕР

(Резюме)

Работа ставит себе целью анализ норм трудового права, обеспечивающих защиту трудящихся женщин по трудовому праву и осуществления их. Чтобы избежать опасности односторонности, автор начинает свою работу с рассмотра нескольких важнейщих компонентов общественного равенства женщин, кратко изображая достижения и еще находящиеся недостатки, а потом переходит к анализу вопросов трудового права. В работе рассматриваются следующие вопросы:

I. Актуальность темы.

II. Изменение положения женщин в Венгрии в последние 30 лет. Обеспечение политического и гражданского равноправия женшин. Обеспечение возможности труда для всех работоспособных женшин. Изменение структуры неблагоприятной занятости женшин. Обеспечение равноправия в области образования и получения квалификации для женшин. Равное распределение руководяших должностей для женшин и мужчин. Равное участие женшин в должностях большой общественной эффективности, где выносятся значительные решения общественного управления и в общественной жизни.

III. Защита женшин по трудовому праву и ее осуществление в фазе установления трудовых отношений, в их продолжительности, и в связи с их прекращением.

DER ARBEITSRECHTLICHE SCHUTZ DER BERUFSTÄTIGEN FRAUEN

DR. IDA HAGELMAYER
Universitätsdozentin

(Zusammenfassung)

Die Hauptaufgabe der Abhandlung ist die Analysierung der dem arbeitsrechtlichen Schutz der beraufstätigen Frauen dienenden Regeln. Im Interesse der Vermeidung der Gefahr der Einseitigkeit beschäftigt sich die Studie zuerst mit einigen der wichtigsten Bestandteilen der gesellschaftlichen Gleichheit der Frauen, demonstriert kurz die erreichten Erfolge und vorhandenen Mängel, und danach beginnt sie die Analysierung der arbeitsrechtlichen Fragen.

Die in der Studie untersuchten Fragen sind die folgenden:

I. Die Aktualität des Themas

II. Die Veränderung der Lage der Frauen in Ungarn in den letzten 30 Jahren. Die Sicherung der Möglichkeit der Erwerbstätigkeit für alle arbeitsfächigen Frauen im aktiven Alter. Die Veränderung der nachteiligen Beschäftigungsstruktur der Frauen Die

gleichmäßige Verteilung der Schul- und Fachbildung zwischen den Geschlechtern. Die annähernd gleiche Verteilung der führenden Posten zwischen den Geschlechtern Die gleiche Teilnahme der Frauen in Berufen mit großer gesellschaftlicher Wirkung, in Berufen, wo in Interesse der Gesellschaftslenkung die wesentlichen Entscheidungen getroffen werden und im öffentlichen Leben.

III. Der arbeitsrechtliche Schutz der Frauen und seine Verwirklichung in der Phase des Zustandekommens des Arbeitsrechtsverhältnisses, während seiner Dauer und in Zusammenhang mit der Einstellung des Arbeitsrechtsverhältnisses.